

Message

From: Hurlid, Kathy [Hurlid.Kathy@epa.gov]
Sent: 4/27/2020 7:03:22 PM
To: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]
Subject: FL's proposed regulations
Attachments: 330_Handbook_404Updates.docx; Draft_404_Handbook.docx; 62-331.010.doc; 62-330.010 (1).doc

Mike and Mindy:

Here are the current regs that FDEP has out for public comment. I know that there are portions here that will be amended and/or are still outstanding: e.g., Governor still has not signed the law amending the enforcement authorities; ESA still has to be worked out; DOT and St. John's corp. are looking for changes to accommodate their current permitting processes (or codifying no need for a permit). R4 asked for comments by COB today so we could discuss tomorrow at 10 am and then forward the comments up through the respective management chains.

There are 4 documents, two are the rules and handbook for their ERP program and 2 are for the 404 program. In this effort they are amending their ERP program and ERP handbook as well as crafting 404 rule and 404 handbook which both frequently cross reference to the ERP rule and ERP handbook (no they don't repeat the language so yes you need to look at all 4 documents. I do not have a consolidated list of EPA show stopper comments to send at this time. I will have that tomorrow from the Region.

All of these are part of their program and are part of the review. We currently understand that FDEP will likely once again be amending the rule "substantially" and will likely again need to go out for comment per their regulations. We do not have any timing on this.

The regulations for the state 404 program:

- 1) The applicant handbook for ERP permits – which is considered part of their regulation and which the next handbook cross-references a lot and to which changes are being made– (330-handbook_404Updates.doc)
- 2) The applicant handbook for the 404 permit program – which is considered part of their regulation – (Draft_404_handbook.doc)
- 3) The regulations for the ERP program - https://www.flrules.org/gateway/View_Notice.asp?id=22931399 (this is just the changes to that regulation, I've provided the link here so other references in the rule 62-331 and the associated handbook can be cross referenced – I added the link to 62-331 below so the links there can be used to get to 62-330)
- 4) The regulations for the 404 program - https://www.flrules.org/gateway/View_Notice.asp?id=22931787 (part of this is 62-331.010.doc)

From: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Sent: Monday, April 27, 2020 11:44 AM
To: McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>
Subject: RE: Could you remind me of the deadlines for reviewing Florida's regs and other pending Fla deadlines

For the FL regs, I think the expectation is that Dave sees the current version of the regs and comments, with the recognition that the regs are still being revised so that there will be another round of commenting. We can put whatever caveats around it as needed and send it up to him. Also, when you do get the draft BA, we need to send it to him with any caveats but before anyone does a deep review of it.

I do need to check in with Ruth about the status of the ESA FRN.

thanks

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From: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Sent: Monday, April 27, 2020 11:00 AM
To: Hurlid, Kathy <Hurlid.Kathy@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: Could you remind me of the deadlines for reviewing Florida's regs and other pending Fla deadlines

I'm trying to be clear that Dave needs to weigh in asap.

Maybe Mindy could help clarify. Are the milestones clear in Dave's mind re his time for review?

From: Hurlid, Kathy <Hurlid.Kathy@epa.gov>
Sent: Monday, April 27, 2020 10:55 AM
To: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: Could you remind me of the deadlines for reviewing Florida's regs and other pending Fla deadlines

So, what does this mean? I was not going to work on this. Per direction last week I was letting the region's review stand at this time so I could focus on getting the contract to OST for the RTC support (will take 60 days to get it up and running), then turn to the retained waters papers. Do you now want me to turn to this? I'm sorry if I'm being dense, I did not get good sleep last night – yes stressing about this and the kids schoolwork for the week.

For FDEP, We don't have the latest BA.

Ex. 5 Deliberative Process (DP)

Is Dave to be sent the current reg that FDEP has posted? This will change, I don't want him assuming he reviewed them and then thinks that is sufficient for approval when we get a package as they will not necessarily be the same. FDEP has told us they will change based upon comments received.

- What we can do is send the comments forward R4 has collated to provide to FDEP when they are compiled by the region.

From: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Sent: Monday, April 27, 2020 10:21 AM
To: Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Chemerys, Ruth <Chemerys.Ruth@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: Could you remind me of the deadlines for reviewing Florida's regs and other pending Fla deadlines

Draft --- Deliberative

Thanks Kathy.

One sort of bottom line issue is getting Dave in the loop as soon as we can. We need to maximize Dave's review time of the

- Draft regs and our comments
- Next BA version and our comments

Ex. 5 Deliberative Process (DP)

Mindy will draft a note to John to assist this coordination step. Kathy/Ruth, just need to get materials pulled together so that we can share with Dave.

Mike

From: Hurlid, Kathy <Hurlid.Kathy@epa.gov>

Sent: Monday, April 27, 2020 8:42 AM

To: McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Chemerys, Ruth <Chemerys.Ruth@epa.gov>

Subject: RE: Could you remind me of the deadlines for reviewing Florida's regs and other pending Fla deadlines

Comments due:

- Today – rule comments to R4
- Thursday - comments on the rule cleared by politicals to FDEP; yeah we've been busy on a few other FL issues.
- Tuesday - Comments to FDEP on the flow chart for their process
- Tuesday – Comments to FDEP on how to determine which permits are to be sent to EPA per non-waiver category – Region does not want to see 75% of FDEP's permits which is the % of permits currently issued by the Corps that may affect species in FL. What we say here will be the standard despite the regulations.
- Comments on the BA - ??? we are awaiting and should receive tomorrow latest draft
- Comments on new changes to the regulations asked for by their DOT and St. Johns corporation (St. Johns Corporation wants to

New issues –

Ex. 5 Deliberative Process (DP)

- St. Johns' corporation has established an ecological agreement with FDEP, they operate all their activities under this agreement and do not need an FDEP ERP permit and they want the same to apply to the 404 permits. Supposedly, Corps gave them a general permit? I think Corps has given a RGP to say if you have an ERP permit.....but it is unclear to us how this is structured or would work. **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

- **Ex. 5 Deliberative Process (DP)**
Ex. 5 Deliberative Process (DP) Awaiting new version of BA to see how it is characterized and if it is a concern still.

- State intends to submit BA with program request. – **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

- FDEP wants comments from EPA in writing on the next version of the BA. See previous bullet **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

From: McDavit, Michael W. <Mcdavit.Michael@epa.gov>

Sent: Friday, April 24, 2020 5:25 PM

To: Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Chemerys, Ruth <Chemerys.Ruth@epa.gov>

Subject: Could you remind me of the deadlines for reviewing Florida's regs and other pending Fla deadlines

Michael

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